

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 396 of 1997

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For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ACTIVE XEROGEL LIMITED

Versus

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Appearance:

MRS SWATI SOPARKAR for Petitioner
MR BHARAT T RAO for Respondent No. 1

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 21/04/98

COMMON ORAL JUDGEMENT

These are the petitions filed by two companies viz. Active Xerogel Limited and Aquagel Chemicals Limited for sanction of a scheme of amalgamation of the former Transferor company with the latter company which is a Transferee Company under Section 391 read with Section 394 of the Companies Act, 1956.

The Transferor Company is engaged at present in manufacturing and marketing of precipitated silica in powder form from the precipitated silica in the form of Wet cake which is being manufactured by the Transferee Company. Both the companies belong to the same management group. Hence the amalgamation would result into vertical integration. The petitions give details of the other advantages that would flow by virtue of the amalgamation of these companies.

All the shareholders of both the companies had given their consents in writing for the sanction of the scheme of amalgamation. All the secured and unsecured creditors of the company have also given their consents in writing for the sanction of the scheme. Hence, the meetings of the concerned parties were dispensed with by this High Court vide the order dated 1.12.1997 passed in the respective company applications.

After the petition was admitted it was advertised in the newspapers and no one has come forward opposing sanction of the Scheme of Amalgamation.

Notice of the petitions has been served upon the Central Government and Shri B.T. Rao, Additional Central Govt. Standing Counsel appearing for the Central Government has stated that the Central Government has observed that the consent of the creditors of the Transferee Company have not been obtained though the Government left the matter for the Court to decide. The learned advocate appearing for the Transferee Company has indicated that no compromise is proposed between the creditors of the Transferee Company and the Transferee Company. Hence, the consent of the creditors of the Transferee Company to the scheme of amalgamation is not required. It is also pointed out that the issue has been covered by a Division Bench of Gujarat High Court in case of Union of India vs. Ambalal Sarabhai Enterprises, 55 Company Cases 623 (at 660 last para). Thus, I am satisfied that the consent of the Transferee Company is not required.

Notice of the petition of the Transferor Companies has also been served upon the Official Liquidator as required under 2nd proviso to Section 394(1) of the Act and the Official Liquidator has filed his Report dated 5.3.1998 stating that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to its members or to public interest.

I have heard Smt. Swati Saurabh Soparkar, learned Advocate for the petitioner-Companies. Having gone through the petition I am satisfied that amalgamation would be in the interest of the company and its members. Under the circumstances the Scheme of Amalgamation (Annexure -C to the petitions) is sanctioned. Prayer in terms of para-15(A) of the petitions is granted.

The petitions are disposed of accordingly. So far as the costs to be paid to the Central Government Standing Counsel is concerned, I quantify the same at Rs. 2,500/- per petition to be paid to Shri B.T. Rao.

Amp/-